Headnote
MI 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 62-104 *Take-Over Bids and Issuer Bids* – relief from the formal issuer bid requirements in NI 62-104 – issuer conducting a normal course issuer bid through the facilities of the TSX and NYSE – relief granted, provided that purchases are subject to a maximum aggregate limit mirroring the TSX NCIB rules.

Applicable Legislative Provisions
National Instrument 62-104 *Take-Over Bids and Issuer Bids*, Part 2 and s. 6.1

Citation: Re Baytex Energy Corp., 2025 ABASC 97 **Date: 20250711**

In the Matter of
the Securities Legislation of
Alberta and Ontario (the **Jurisdictions**)

and

In the Matter of
the Process for Exemptive Relief Applications
in Multiple Jurisdictions

and

In the Matter of
Baytex Energy Corp. (the **Filer**)

Decision

Background
The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the requirements contained in the Legislation relating to issuer bids (the **Issuer Bid Requirements**) shall not apply to purchases of the Filer's common shares (**Common Shares**) made by the Filer through the facilities of the New York Stock Exchange (the **NYSE**) and other United States-based trading systems (together with the NYSE, **U.S. Markets**) in connection with the Current Bid (as defined below) and any issuer bid made in the normal course through the facilities of the Toronto Stock Exchange (the **TSX**) that the Filer commences shortly following the expiry of the Current Bid and that expires not later than 36 months from the date of this decision (each such bid an **Exempt Bid** and together the **Exempt Bids**, and such exemption, the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

(a) the Alberta Securities Commission is the principal regulator for this application;

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Saskatchewan, Manitoba, Quebec, New Brunswick, Prince Edward Island, Nova Scotia, and Newfoundland and Labrador; and

(c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* or MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a corporation existing under the *Business Corporations Act* (Alberta) and the head office and registered office of the Filer are located in Calgary, Alberta.

2. The authorized share capital of the Filer consists of an unlimited number of Common Shares and up to 10,000,000 preferred shares. As at May 31, 2025, 768,317,006 Common Shares were issued and outstanding and there were no preferred shares issued and outstanding.

3. The Filer is a reporting issuer in each of the provinces of Canada. The Filer is not in default of its obligations as a reporting issuer under the applicable securities legislation in any of the jurisdictions in which it is a reporting issuer.

4. The Filer is a registrant with the SEC and is subject to the requirements of the 1934 Act. For the year ending December 31, 2024, the Filer qualified as a "foreign private issuer" pursuant to the 1934 Act. The Filer is not in default of any requirements under the 1934 Act.

5. The Common Shares are listed for trading on the TSX and the NYSE.

6. The Common Shares commenced trading on the NYSE on February 23, 2023 (the **NYSE Listing Date**).

7. On June 24, 2025, the Filer announced that the TSX had accepted its Notice of Intention to Make a Normal Course Issuer Bid (the **Current Notice**) during the 12-month period commencing July 2, 2025 and ending July 1, 2026 to purchase up to 66,244,464 Common Shares representing approximately 10% of the Filer's public float (as of the date specified in the Current Notice) (the **Current Bid**).

8. The Current Notice specifies that purchases under the Current Bid will be effected through the facilities of the TSX, the NYSE and/or alternative trading systems in Canada and the United States.

9. Issuer bid purchases made in the normal course through the facilities of the TSX are, and will be, conducted in reliance upon the exemption from the Issuer Bid Requirements set out in subsection 4.8(2) of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (**NI 62-104**, and such exemption, the **Designated Exchange Exemption**). The Designated Exchange Exemption provides that an issuer bid made in the normal course through the facilities of a designated exchange is exempt from the Issuer Bid Requirements if the bid is made in accordance with the bylaws, rules, regulations and policies of that exchange. The TSX is a designated exchange for the purposes of the Designated Exchange Exemption.

10. The TSX's rules governing the conduct of normal course issuer bids (the **TSX NCIB Rules**) are set out, inter alia, in Sections 628 to 629.3 of Part VI of the TSX Company Manual. The TSX NCIB Rules permit a listed issuer to acquire, over a 12-month period commencing on the date specified in the Notice of Intention to Make a Normal Course Issuer Bid (a **Notice**), up to the greater of (a) 10% of the public float on the date specified in the Notice; or (b) 5% of such class of securities issued and outstanding on the date specified in the Notice.

11. Other than purchases made in reliance on this decision, purchases under issuer bids made in the normal course through the facilities of the U.S. Markets and alternative trading systems in Canada are, and will be, conducted in reliance upon the exemption from the Issuer Bid Requirements set out in subsection 4.8(3) of NI 62-104 (the **Published Markets Exemption**). The Published Markets Exemption provides that an issuer bid made in the normal course on a published market, other than a designated exchange, is exempt from the Issuer Bid Requirements if, among other things, the bid is for not more than 5% of the outstanding securities of a class of securities of the issuer and the aggregate number of securities acquired in reliance on the Published Markets Exemption by the issuer and any person acting jointly or in concert with the issuer within any 12-month period does not exceed 5% of the securities of that class outstanding at the beginning of the 12-month period.

12. As a result, normal course issuer bid purchases of Common Shares through the U.S. Markets in reliance on the Published Market Exemption, including pursuant to the Current Bid, cannot exceed 5% of the issued and outstanding Common Shares as the date of the Current Notice or any future Notice.

13. For the period commencing on the NYSE Listing Date and ended on December 31, 2024, an aggregate of 8,261,468,187 Common Shares were traded over published markets in Canada and the United States, with trading volumes having occurred as follows:

    (a) 2,226,544,795 Common Shares (or approximately 27% of total aggregate trading) over the facilities of the TSX;

(b) 2,130,826,672 Common Shares (or approximately 26% of total aggregate trading) over published markets in Canada other than the TSX; and

(c) 3,904,096,720 Common Shares (or approximately 47% of total aggregate trading) over U.S. Markets.

14. For the period commencing on January 1, 2025 and ended on May 30, 2025, an aggregate of 5,227,976,072 Common Shares were traded over published markets in Canada and the United States, with trading volumes having occurred as follows:

(a) 523,682,797 Common Shares (or approximately 10% of total aggregate trading) over the facilities of the TSX;

(b) 691,194,749 Common Shares (or approximately 13% of total aggregate trading) over published markets in Canada other than the TSX; and

(c) 4,013,098,526 Common Shares (or approximately 77% of total aggregate trading) over U.S. Markets.

15. The Filer's daily trading volume of the Common Shares on the U.S. Markets was greater than on the TSX for a significant majority of trading days. From the NYSE Listing Date to December 31, 2024, the trading volume of the Common Shares on the U.S. Markets was greater than the trading volume on the TSX approximately 82% of the dates on which both the TSX and NYSE were open for trading, and for the period from January 1, 2025 to May 30, 2025, the trading volume of the Common Shares on the U.S. Markets was greater than the trading volume on the TSX on 100% of the dates on which both the TSX and NYSE were open for trading.

16. As a higher volume of Common Shares currently trade through the U.S. Markets, relative to the TSX, the Filer wishes to have the ability to make repurchases under the Exempt Bids over the U.S. Markets in excess of the maximum allowable in reliance on the Published Markets Exemption, up to the maximum authorized and approved by its board of directors and permissible by the TSX.

17. The Exempt Bids will be effected in accordance with all applicable securities laws, including the 1934 Act, the 1933 Act, and the rules of the SEC made pursuant thereto, and any applicable bylaws, rules, regulations or policies of the U.S. Markets on which the purchases are carried out (collectively, the **Applicable U.S. Rules**).

18. In connection with the Exempt Bids, the Filer will rely on the "safe harbour" provided by Rule 10b-18 under the 1934 Act (**Rule 10b-18**) in respect of the provisions of the 1934 Act precluding market manipulation. In order for the Filer to comply with Rule 10b-18, all purchases made by or on behalf of the Filer through the U.S. Markets are required:

(a) to be made through only one broker or dealer in any one day;

(b) not to be made at the opening of a trading session or during the 10 minutes before the scheduled close of a trading session;

(c) not to be made at prices higher than the highest published independent bid or last reported independent transaction price (whichever is higher) on the consolidated system for securities listed on the NYSE; and

(d) to be in an amount that does not exceed, in any one day, an aggregate amount equal to 25% of the average daily trading volume over the U.S. Markets (with certain limited exceptions for block purchases).

19. Under the Applicable U.S. Rules, there is no aggregate limit on the number of Common Shares that may be purchased by the Filer through the facilities of the U.S. Markets.

20. The Filer believes that the Exempt Bids are in the best interests of the Filer.

21. No other exemptions exist under applicable Canadian securities legislation that would permit the Filer to continue to make purchases under the Exempt Bids through the U.S. Markets on an exempt basis once the Filer has purchased, within a 12-month period, 5% of the outstanding Common Shares in reliance on the Published Markets Exemption.

22. The purchase of Common Shares pursuant to the Exempt Bids will not adversely affect the Filer or the rights of any of the Filer's security holders and such purchases will not materially affect control of the Filer.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that:

(a) the Exempt Bids are permitted under the Applicable U.S. Rules, and are established and conducted in accordance and compliance with the Applicable U.S. Rules;

(b) the Notice accepted by the TSX in respect of an Exempt Bid specifically contemplates that purchases under such bid will also be effected through U.S. Markets;

(c) purchases of Common Shares under an Exempt Bid in reliance on this decision shall only be made:

(i) in compliance with Part 6 (Order Protection) of National Instrument 23-101 *Trading Rules*;

(ii) at a price which complies with the requirements of paragraph 4.8(3)(c) of NI 62-104; and

(iii) in accordance with the TSX NCIB Rules.

(d) the Exemption Sought applies only to the acquisition of Common Shares by the Filer pursuant to an Exempt Bid made within 36 months of the date of this decision;

(e) prior to purchasing Common Shares under any Exempt Bid in reliance on this decision, the Filer issues and files a press release setting out the terms of the Exemption Sought and the conditions applicable thereto;

(f) the Filer does not acquire Common Shares in reliance on the Published Markets Exemption if the aggregate number of Common Shares purchased by the Filer, and any person or company acting jointly or in concert with the Filer, in reliance on this decision and the Published Markets Exemption within any period of 12 months exceeds 5% of the outstanding Common Shares on the first day of such 12-month period; and

(g) the aggregate number of Common Shares purchased pursuant to an Exempt Bid in reliance on this decision, the Designated Exchange Exemption and the Published Markets Exemption does not exceed, over the 12-month period specified in the Notice in respect of the relevant Exempt Bid, 10% of the public float as specified in such Notice.

"original signed by"
Timothy Robson
Manager, Legal
Corporate Finance
Alberta Securities Commission